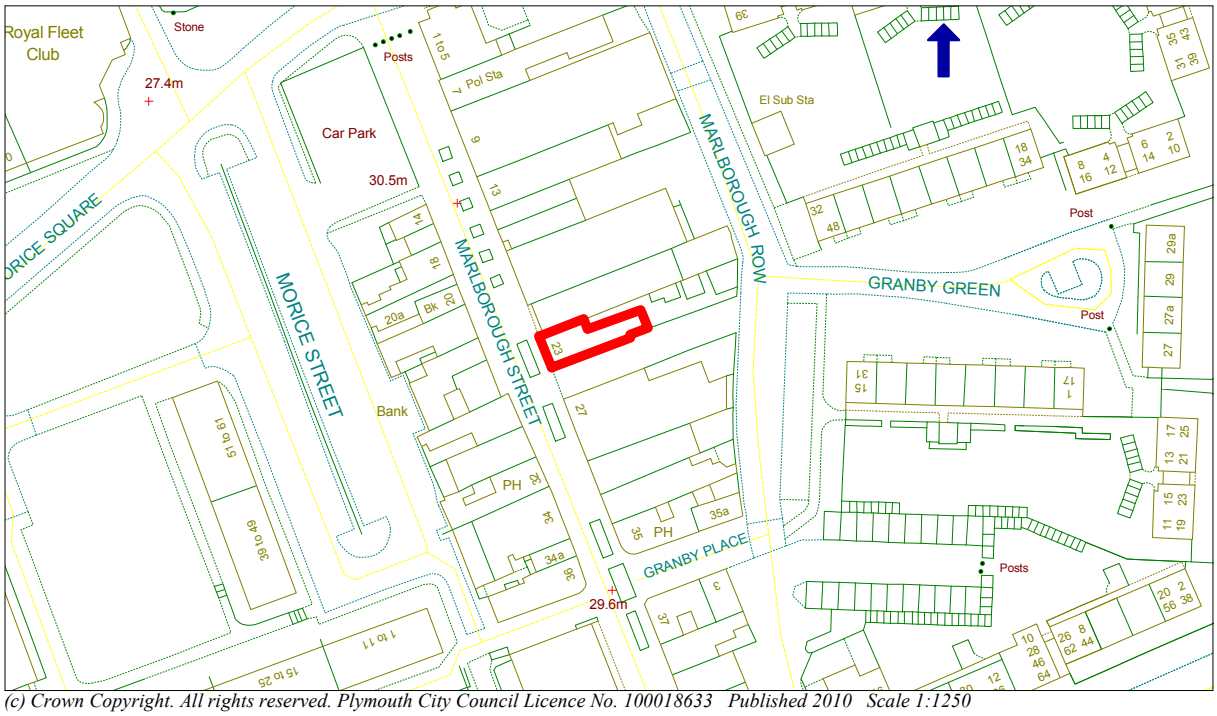
***ITEM:* 16**

Application Number:	10/01022/FUL
Applicant:	Mr M Obrien
Description of Application:	Change of use from shop (use class A1) to amusement arcade (sui generis use)
Type of Application:	Full Application
Site Address:	23 MARLBOROUGH STREET PLYMOUTH
Ward:	Devonport
Valid Date of Application:	16/07/2010
8/13 Week Date:	**10/09/2010**
Decision Category:	Member Referral
Case Officer :	Jeremy Guise
Recommendation:	Grant Conditionally
Click for Application Documents:	**www.plymouth.gov.uk**



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OFFICERS REPORT

Referral to Planning Committee by Cllr Nicky Wildy (Lab. Devonport)
Despite DP13 it is close to a primary school so it is a LPA issue. This can now be a material planning consideration. See below for discussion re Marlborough Street and consequences of delays in development by Redrow. Not asking for a 'moral' judgement but this is close to new residential mixed use development. Can it be justified in terms of aspirations for the area? Delays in delivery of new local centre mean that here is an identified gap where new is not ready but do we wish to have a new use, e.g. gambling arcade in this street. Marlborough street has a particular set of circumstances. Blighted with empty shops and underinvestment but now more residential in character. This warrants debate and there is precedent for committee considering planning applications which are in a particular set of circumstances.

Site Description
No. 23 Marlborough Street is a four storey building on the western side of the street comprising of commercial premises on the ground floor with residential accommodation over. Formerly a charity shop, that use has ceased and the premises is now vacant.

Proposal Description
Planning permission is sought for change of use from a shop (use Class A1) to an amusement arcade (sui generis use).

The ground floor comprises of two rooms. The main room across the whole width of the premises is approx. 8.5x5.5m and would be fitted out with gaming machines which is approx. 3.5x6.5m would be used as a staff and private storage area. The amusement shop would employ two full time and one part time member of staff and open 9am – 10pm Monday – Saturday and 9am-10pm Sunday.

Relevant Planning History
None- previously the premises were used as a charity shop.

Consultation Responses

Public Protection Service:-
Object on the grounds of insufficient information. The public protection service will require the completion of a noise impact assessment before evaluating whether or not this is an appropriate change of use.

Highway Authority:-
Have confirmed that they have no comment to make on this application.

Representations
Neighbours around the site have been notified of the application. Three letters of representation (LOR's) has been received raising objection to the proposal on the following grounds:-

- Government planning guidelines suggest this type of use should be in secondary shopping locations. 23 Marlborough Street is in a core retail area of Marlborough Street next to a large Co-op food store, Iceland, Lloyds Chemists etc. PPG guidelines also suggest they should be away from residential property. Here there are flats directly above.

- Object to this application because we operate an ongoing arcade business and are self employed. We have 41 and 43 Marlborough Street. We already have a betting shop and two operating arcades, which, if this application is granted, would affect our trade in the long run. Plus added competition and losses to our businesses resulting in possible closure. The addition of yet another gambling establishment in an area of extreme social deprivation and low income cannot possibly be justified, and cannot have any positive impact on the local community.

- Loss of A1 retail harmful to the longer term regeneration of Marlborough Street. With the loss of retail businesses, Marlborough Street is a growing residential area due to LOTS (living over the shops) initiative.

- The operation could lead to late night rowdiness and increased anti-social behaviour.

Analysis
Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

The key issues in this case are:-
- The principle of change of use to an amusement arcade (Policies CS01, CS07; CS08 and CS11 of the Core Strategy)
- Impact upon the amenities of neighbouring properties (Policy CS34 Core Strategy)
- Traffic implications, if any of the proposed change of use (Policies CS28 and CS34 of the Core Strategy)

The principle of change of use to an amusement arcade
Marlborough Street is no longer designated as a district centre. Policy CS07 (Plymouth Retail Hierarchy) of the Core Strategy states:-

New centres will be created in the following locations.
Local Centres

3. Devonport. To support the regeneration of the Devonport area, and help create a new sustainable linked community using the opportunity created by the release of MoD land,

Proposal DP01 of the Devonport Area Action Plan envisages a new local shopping centre around the Chapel Street /Fore Street junction.

Policy CS07 (Plymouth Retail Hierarchy) and DP13 of the Devonport AAP advises to be flexible about change of use.

Policy CS07 states:-

b. Marlborough Street local centre Devonport to be allowed to change alongside development of the new Devonport local centre through a reduction in its overall retail provision, whilst retaining some element of local provision for the immediate community.

Policy DP13 of the Devonport Area Action Plan seeks to support the evolution of Marlborough Street into a mixed use street with a significant increase in residential accommodation as well as retail, office, health and community uses. Paragraph 7.26 of the supporting text makes clear the flexible policy position in relation to changer of use. It states:-

With the new retail focus being located at Fore Street, Chapel Street junction, a flexible approach needs to be taken with regard to changes of use from retail to other appropriate uses in Marlborough Street.

Given this policy background, an amusement arcade is considered to be an appropriate use for Marlborough Street and to accord with Policy CS11 (Changes of Use in District and Local Centres)

National Planning Policy Statement 4 (Planning for sustainable economic growth) has replaced PPS6 Planning of town centres. It and PPS1 which sets out the general principles is supportive of re-use of empty commercial buildings (section 27viii, general approach).

Impact upon the amenities of neighbouring properties

Empty buildings have little positive impact upon the character of the area. A new use with an active frontage is therefore, in broad terms, welcome.

There are a number of existing businesses, take away restaurants, pubs convenience shops etc., which open into the early evening in Marlborough Street and evidence elsewhere in the city – *Showboat* Market Avenue, *Jackpot* King Street of amusement arcades that co-exist with residential accommodation over. Public Protection Service's request for a specific noise assessment is not supported. This is considered to be excessively onerous requirement.

However, this application seeks long opening hours (09.00-22.00 Mon-Sat and 09.00-21.00 Sundays and public holidays).Given the Council's policy decision to change the status of Marlborough Street as a local district centre and encourage a more flexible approach towards change of use, including to residential, it is not considered appropriate to encourage new uses with late

night opening. More restrictive opening hours regime- 09.00-20.00 hours Mondays to Saturdays inclusive and 10-00 - 16.30 hours on Sundays and Bank or Public Holidays – is recommended.

Commercial competition between business which offer similar goods and services is not normally an issue of planning consideration.

Traffic implications, if any of the proposed change of use
There is limited impact upon parking in the area. There are parking courts at either end of Marlborough Street and the business is, like the charity shop predecessor, unlikely to attract significant patronage outside the local area.

Equalities & Diversities issues
Access to the arcade and within the aisles within the shop is provided for people with disabilities.

There are no senior schools within the area, whose pupils could be attracted by the premises.

Section 106 Obligations
None required

Conclusions
There are a number of vacant commercial units in Marlborough Street. So, whilst an amusement arcade may not be everyone's first choice of use for the area it at least provides occupancy and an active frontage and meets policy CS11 of the Core Strategy.

Recommendation
In respect of the application dated **16/07/2010** and the submitted drawings, **OS site plan extract ; Unlabled existing and proposed ground floor plan 1:100 scale; Unlabled existing and proposed front elevation 1:100 scale,** it is recommended to: **Grant Conditionally**

Conditions

DEVELOPMENT TO COMMENCE WITHIN 3 YEARS
(1)The development hereby permitted shall be begun before the expiration of three years beginning from the date of this permission.

Reason:
To comply with Section 51 of the Planning & Compulsory Purchase Act 2004.

OPENING HOURS
(2) The use hereby permitted shall not be open to customers outside the following times: 09.00-20.00 hours Mondays to Saturdays inclusive and 10-00 - 16.30 hours on Sundays and Bank or Public Holidays.

Reason:
To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by persons arriving at and leaving the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

(3) GROUND FLOOR DISPLAY
Prior to the amusement arcade being brought into use, details shall be submitted to and approved in writing by the Local Planning Authority to show how the ground floor windows facing Marlborough Street will be maintained so as to provide a point of interest within the streetscene. Development shall be carried out in accordance with the approved details and thereafter remain in that format.

Reason:
In order that an active use on the ground floor presents a clear presence to the street in accordance with Policy CS02 of the Core Strategy.

INFORMATIVE ADVERT CONSENT
(1) No consent is implied by the grant of Planning Permission for the advertisement illustrated on the submitted plans: separate consent is required for this element.

Statement of Reasons for Approval and Relevant Policies
Having regard to the main planning considerations, which in this case are considered to be the principle of change of use to an amusement arcade, impact upon the amenities of neighbouring properties, traffic implications, if any of the proposed change of use, the proposal is not considered to be demonstrably harmful. In the absence of any other overriding considerations, and with the imposition of the specified conditions, the proposed development is acceptable and complies with (a) policies of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and supporting Development Plan Documents and Supplementary Planning Documents (the status of these documents is set out within the City of Plymouth Local Development Scheme) and the Regional Spatial Strategy, and (b) relevant Government Policy Statements and Government Circulars, as follows:

PPS1 - Delivering Sustainable Development
PPS6 - Planning for Town Centres
CS28 - Local Transport Consideration
CS32 - Designing out Crime
CS34 - Planning Application Consideration
CS07 - Plymouth Retail Hierarchy
CS08 - Retail Development Considerations
CS11 - Change of Use in District/Local Centres
CS01 - Sustainable Linked Communities
CS02 - Design
PPS4 - Economic Growth